

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 94-0760

Adjusted Gross Income Tax

Fiscal Year Ended 03-31-93

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ISSUE(S)

I. Adjusted Gross Income— Non-business income

Authority: IC 6-3-1-3.5 (b); 45 IAC 1-1-135; Internal Revenue Code Section 277;

Taxpayer protests the department's addback of Federal Government subsidy received in an agency capacity.

STATEMENT OF FACTS

Taxpayer, incorporated under the laws of Indiana in June 1971 files Indiana Corporate Income Tax Returns and is a cooperative housing organization whose primary purpose is to provide low or moderate housing on a mutual ownership basis to operate and maintain real and personal property and to operate for benevolent, fraternal and social purposes. Taxpayer is subsidized by the Federal Government and receives income from cooperative members within an agency relationship. No part of the income inures to the benefit of any member.

The cooperative is run on a nonprofit basis yet it does not qualify as either a partially or wholly exempt corporation. Under Regulation 45 IAC 1-1-135 the taxpayer is required to report and calculate gross income tax as a regular corporation. This means the receipts herein addressed are subject to gross income tax, unless received in an agency capacity. The Regulation reads in relevant part, "...their income from investments, admission charges, rental fees, vending machines, laundry facilities and like receipts would be subject to gross income tax. However, such associations would be allowed to exclude income not taxable under any other section of the Act, such as receipts received in an agency capacity...." The Regulations goes on to define as nontaxable Homeowner's Association membership assessments paid to cover maintenance costs and operating expenses. In connection with this last statement, the Department notes that what the department determined were taxable receipts are actually reimbursements from the Federal Government and not rent, therefore funds paid by the cooperative members-owners for maintenance and operating expenses are not taxable gross receipts.

The taxpayer is not a partially or wholly exempt organization and the taxpayer completes a regular corporation return for federal and state purposes.

On May 8, 1995, another POA states he has rulings and Letters of Finding which give taxpayer its exemption, i.e. LOF 81-4799 GIT. No other copies were provided. Taxpayer's representative was advised that the letters of finding referred to Gross Income while the taxpayer is assessed tax on its Adjusted Gross Income received from cooperative members and the Federal Government Subsidy. On May 10, 1995 taxpayer advised that it was filing an amended return for both Federal and State as the protest is to be on Adjusted Gross Income and a copy would be mailed.

No amended returns have been found and on October 16, 1998 the taxpayer was advised that an outstanding liability remained with a notation that the LOF's discussed on May 8, 1995 referred to Gross Income Tax and the department's adjustment was for Adjusted Gross Income Tax. On November 30, 1998, receiving no response to its prior letter, the department notified the taxpayer that in order to provide fair and equitable treatment, the department had scheduled a hearing for Wednesday, December 16, 1998. Taxpayer called on December 14, 1998 and asked for permission to put its protest in writing that it approved. Taxpayer cites Section 277 of the Internal Revenue Code and states it rules that all items of receipts and disbursements are allocated among unit owners source and non unit owners source. The Internal Revenue Services taxes the corporation only on receipts and disbursements not connected with Unit owners. It has attached a schedule of allocation, which was part of the Federal income tax return showing the corporation's income was \$68.00 for the year ended March 31, 1993. The Federal income tax return does not contain this information.

Indiana does not allocate income and expenses under Section 277 of the Internal Revenue Code. Taxable income with respect to corporate taxpayers is defined in Internal Revenue Code section 63 with three adjustments, which does not include the allocation of income and expenses. The department allows non-taxable income for gross but does not allocate for adjusted gross. Although the corporation within an agency capacity on behalf of the members received Section 8 subsidy, there is no exemption for adjusted gross income. In addition the federal return shows a taxable income of \$8082 before net operating loss deduction to which is added the Indiana modifications for Indiana taxation.

I. **Adjusted Gross Income** – Non-business income

DISCUSSION

Taxpayer states it is exempt under Internal Revenue Service Code Section 277 for its members and has provided a schedule of income and expenses allocating its receipts and expenses to members and non-members. It further states only the member's portion should be subject to adjusted gross income tax.

Taxpayer was exempted from gross income tax for receipts received in an agency capacity. The issue is whether the taxpayer can allocate adjusted gross income, exempt to its members and taxable to its non-members.

The department has no provision in the Indiana Code or Regulations, which allows the elimination of

income allocated to members in the adjusted gross income of a taxpayer. The taxpayer has offset its expenses against income received and has excluded nonbusiness income on line 33 of its tax return, which in effect is double deduction. Taxpayer's protest letter dated December 14, 1998 has an alternative in which it allocates members and non-members' profit and loss statement in which only non-members are taxed on its adjusted gross income. The department however, has no allocation method for adjusted gross income tax; therefore the taxpayer's protest is denied.

FINDING

Taxpayer's protest is denied.